

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

JUAN M. CRUZADO-LAUREANO,  
et al.,

Plaintiffs,

v.

COMMONWEALTH OF PUERTO RICO,  
et al.,

Defendants.

Civil No. 06-1472 (JAF)

**OPINION AND ORDER**

Plaintiffs, Juan M. Cruzado-Laureano, Domingo Cruzado-Matos, and Olga Cruzado-Laureano, bring this action for malicious prosecution, conspiracy to commit malicious prosecution, "and other illegal and unconstitutional policies and actions" under 42 U.S.C. § 1983 (2006) and Puerto Rico laws, 31 L.P.R.A. § 5141 (2004) ("Article 1802") and 31 L.P.R.A. § 5142 (2004) ("Article 1803") against Defendants Commonwealth of Puerto Rico, former governor Sila María Calderón, former Attorney General Annabelle Rodríguez, Task Force Agent Carlos Vázquez, former U.S. Attorney Guillermo Gil-Bonar, former assistant U.S. Attorney Rebecca Kellogg De Jesús, Special Independent Prosecutor Ivette Aponte-Nogueras, and Félix Fumero and José J. Hernández, occupations unknown. Docket Document No. 5. Defendants Gil-Bonar, Kellogg, and Vázquez move to dismiss under Rules 12(b)(1), (b)(2), (b)(5), and (b)(6) of the Federal

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1 Rules of Civil Procedure.<sup>1</sup> Docket Document No. 22. Defendants  
2 Commonwealth of Puerto Rico, Calderón, Fumero, Aponte-Nogueras, and  
3 Rodríguez move to dismiss the complaint under Federal Rules of  
4 Civil Procedure 12 (b) (1) and 12(b) (6). Docket Document No. 23.  
5 Plaintiffs oppose both motions. Docket Document Nos. 27, 34.

6 I.

7 **Factual and Procedural History**

8 We derive the facts from Plaintiffs' amended complaint.  
9 Docket Document No. 5. As we must, we "assume all plaintiffs'  
10 allegations are true and make all reasonable inferences in favor of  
11 the plaintiffs." Alternative Energy, Inc. v. St. Paul Fire and  
12 Marine Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001).

13 On June 7, 2002, Plaintiff Juan M. Cruzado-Laureano  
14 ("Cruzado") was convicted of embezzlement, extortion, theft, money  
15 laundering, and witness tampering in federal court. United States  
16 v. Cruzado-Laureano, Crim. No. 01-690, Docket Document No. 89. On  
17 November 13, 2002, Cruzado received concurrent sentences of sixty-  
18 three months on eleven counts. United States v. Cruzado-Laureano,  
19 Crim. No. 01-690, Docket Document No. 110. Cruzado unsuccessfully  
20 appealed these convictions. United States v. Cruzado-Laureano, 440  
21 F.3d 44 (1st Cir. 2006); United States v. Cruzado-Laureano, 404

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<sup>1</sup>The United States also joined this motion to dismiss, despite the fact that Plaintiffs removed them as a defendant in their amended complaint of July 11, 2006.

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1 F.3d 470 (1st Cir. 2005); United States v. Cruzado-Laureano,  
2 No. CR-01-690, 2006 U.S. Dist. LEXIS 18415, at \*1 (D.P.R. April 7,  
3 2006).

4 After Cruzado's federal convictions, in or around August 2003,  
5 Cruzado faced charges in Puerto Rico Commonwealth court for several  
6 felony violations of the Puerto Rico Penal Code. The subsequent  
7 trial resulted in Cruzado's acquittal and discharge in May 2005.  
8 On May 15, 2006, Plaintiffs brought the present action, alleging  
9 malicious prosecution and conspiracy to commit malicious  
10 prosecution, based on their allegation that Defendant Prosecutor  
11 Aponte-Nogueras knew or should have known that the charges against  
12 Cruzado were frivolous or, alternatively, that Defendants  
13 duplicated charges brought in federal court with the sole purpose  
14 of increasing Cruzado's punishment or exposing him to hardship  
15 resulting from the defense of two separate cases. Docket Document  
16 No. 1. Plaintiffs filed an amended complaint on July 11, 2006.  
17 Docket Document No. 5.

18 On September 29, 2006, Defendants Gil-Bonar, Kellogg, and  
19 Vázquez moved to dismiss Plaintiffs' complaint pursuant to Federal  
20 Rules of Civil Procedure 12(b)(1), (b)(2), (b)(5) and (b)(6).  
21 Defendants argue that the complaint should be dismissed due to:  
22 (1) improper service; (2) lack of subject matter jurisdiction based  
23 on Plaintiffs' failure to exhaust administrative remedies as  
24 required by the Federal Tort Claims Act ("FTCA"); (3) lack of

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1 jurisdiction over suits against federal agencies and their  
2 employees; and, alternatively, (4) failure to state a claim under  
3 42 U.S.C. § 1983. Plaintiffs opposed the motion on December 5,  
4 2006. Docket Document No. 34.

5 On October 16, 2006, Defendants Commonwealth of Puerto Rico,  
6 Calderón, Fumero, Aponte-Nogueras, and Rodríguez filed a motion to  
7 dismiss the complaint under Federal Rules of Civil Procedure 12  
8 (b)(1) and 12(b)(6) for the following reasons: (1) the statute of  
9 limitations bars the suit; (2) failure to state a claim under 42  
10 U.S.C. § 1983; (3) the Eleventh Amendment bars claims for monetary  
11 damages against defendants; (4) qualified immunity; (5) failure to  
12 state a claim of conspiracy; (6) lack of respondeat superior  
13 liability under § 1983; and (7) dismissal of the supplemental  
14 jurisdiction claims would be appropriate. Docket Document No. 23.  
15 Plaintiffs opposed this motion on November 20, 2006. Docket  
16 Document No. 27.

## 17 II.

### 18 Motion to Dismiss Standard Under Rule 12(b)(6)

19 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a  
20 defendant may move to dismiss an action against him, based solely  
21 on the pleadings, for the plaintiff's "failure to state a claim  
22 upon which relief can be granted." FED. R. CIV. P. 12(b)(6). In  
23 assessing a motion to dismiss, "[w]e begin by accepting all well-  
24 pleaded facts as true, and we draw all reasonable inferences in

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1 favor of the [nonmovant]." Wash. Legal Found. v. Mass. Bar Found.,  
2 993 F.2d 962, 971 (1st Cir. 1993); see also Coyne v. City of  
3 Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992). We then  
4 determine whether the plaintiff has stated a claim under which  
5 relief can be granted.

6 We note that a plaintiff must only satisfy the simple pleading  
7 requirements of Federal Rule of Civil Procedure 8(a) to survive a  
8 motion to dismiss. Swierkiewicz v. Sorema N.A., 534 U.S. 506  
9 (2002); Morales-Villalobos v. Garcia-Llorens, 316 F.3d 51, 52-53  
10 (1st Cir. 2003); DM Research, Inc. v. College of Am. Pathologists,  
11 170 F.3d 53, 55-56 (1st Cir. 1999). A plaintiff need only set  
12 forth "a short and plain statement of the claim showing that the  
13 pleader is entitled to relief," FED. R. CIV. P. 8(a)(2), and need  
14 only give the respondent fair notice of the nature of the claim and  
15 petitioner's basis for it. Swierkiewicz, 534 U.S. at 512-515.  
16 "Given the Federal Rules' simplified standard for pleading, '[a]  
17 court may dismiss a complaint only if it is clear that no relief  
18 could be granted under any set of facts that could be proved  
19 consistent with the allegations.'" Id. at 514 (quoting Hishon v.  
20 King & Spalding, 467 U.S. 69, 73 (1984)).

### 21 III.

### 22 Analysis

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1           Because we find that Plaintiffs have failed to state a claim  
2 upon which relief can be granted under 42 U.S.C. § 1983, we do not  
3 address the merits of Defendants' other arguments.

4           In the First Circuit, malicious prosecution may serve as the  
5 basis for a § 1983 claim only if the plaintiff alleges a  
6 deprivation or injury of constitutional magnitude. Torres v.  
7 Superintendent of Police, 893 F.2d 404, 409 (1st Cir. 1990). The  
8 burden is on the plaintiff to identify the specific constitutional  
9 right infringed. Nieves v. McSweeney, 241 F.3d 46, 54 (1st Cir.  
10 2001). Here, Plaintiffs have failed to specify a constitutional  
11 violation that serves as the basis for their § 1983 claim. For the  
12 purposes of this order, however, we will assume that Plaintiffs  
13 base their complaint on an alleged violation of either Cruzado's  
14 procedural due process or Fourth Amendment rights.<sup>2</sup>

15           To analyze a malicious prosecution claim, federal law borrows  
16 the elements from the relevant common law tort actionable under  
17 state law. Torres, 893 F.2d at 409. In Puerto Rico, a plaintiff  
18 bringing a malicious prosecution case must allege the following  
19 four elements: (1) the defendants initiated or instigated a criminal  
20 action; (2) the criminal action terminated in the plaintiff's  
21 favor; (3) the defendants acted with malice and without probable

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<sup>2</sup>The First Circuit has decided that substantive due process cannot provide the constitutional basis for a federal malicious prosecution claim. Nieves, 241 F.3d at 53-54.

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1 cause; and (4) the plaintiff suffered damages. Rucci v. United  
2 States INS, 405 F.3d 45, 49 (1st Cir. 2005).

3 The third element, requiring that the state officials acted  
4 without probable cause to prosecute the plaintiff, cannot be met if  
5 a second prosecution based on the same facts results in a  
6 conviction. Rodriguez-Mateo v. Fuentes-Agostini, No. 02-1662, 2003  
7 U.S. App. LEXIS 10762, at \*\*5 (1st Cir. May 28, 2003) (finding  
8 appellant's malicious prosecution claim defective because  
9 investigations based on facts similar to the ones at issue resulted  
10 in convictions). We take judicial notice of the fact that Cruzado  
11 was convicted for embezzlement, extortion, theft, money laundering,  
12 and witness tampering in federal court. Cruzado-Laureano, 440 F.3d  
13 44; Cruzado-Laureano, 404 F.3d 470; Cruzado-Laureano, No. CR-01-  
14 690, 2006 U.S. Dist. LEXIS 18415, at \*1 (D.P.R. April 7, 2006).

15 Plaintiffs have not detailed the charges brought by Defendants  
16 against Cruzado, referring to them only vaguely as "felonies."  
17 Docket Document No. 5. Plaintiffs have, however, implied that the  
18 Commonwealth and federal charges were similar enough that  
19 Defendants could have brought the Commonwealth charges together  
20 with the federal ones, but chose not to do so simply to aggravate  
21 Cruzado's woes. Id. We, therefore, find that Defendants had  
22 probable cause to bring charges based on the same or similar  
23 underlying facts. Because Plaintiffs cannot meet the third element  
24 of a malicious prosecution claim, we need not reach the remaining

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elements, and find that Plaintiffs failed to state a claim under § 1983.

**IV.**

**Conclusion**

In accordance with the foregoing, we **GRANT** Defendants' motion to dismiss Plaintiff's complaint for failure to state a claim against all Defendants pursuant to Fed. R. Civ. P. 12(b)(6).

**IT IS SO ORDERED.**

San Juan, Puerto Rico, this 18<sup>th</sup> day of January, 2007.

S/José Antonio Fusté  
JOSE ANTONIO FUSTE  
Chief U.S. District Judge